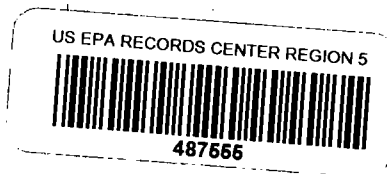


# BARNES & THORNBURG

Michael A. Metz  
(219) 296-2541



2/4/92  
E5  
305 Ameritrust National Bank Building  
301 South Main Street  
Elkhart, Indiana 46516  
(219) 293-0661

TW/X 310-341-3427 B&T LAW IND  
Telecopier (219) 296-2535

February 4, 1992

Thomas P. Carroll, Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Section  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044

RE: United States of America v.  
Walerko Tool & Engineering Corporation  
In the United States District Court  
For the Northern District of Indiana  
South Bend Division  
Civil Action No. S91-00411M

Dear Tom:

Enclosed are copies of Defendant's First Set of Interrogatories to Plaintiff and Defendant's First Request for Production of Documents to Plaintiff in the above-stated case. If you have any questions or comments, please contact me.

Sincerely,

BARNES & THORNBURG

*Michael A. Metz*

Michael A. Metz

/tlf

Enclosures

cc: Ed Walerko (w/encs.)

Richard W. Paulen (w/o encs.)

MAM01368

90-11-3 774

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

WALERKO TOOL &  
ENGINEERING CORPORATION, )

Defendant. )

CASE NO.S91-00411M

**DEFENDANT'S FIRST REQUEST FOR PRODUCTION  
OF DOCUMENTS TO PLAINTIFF**

Defendant Walerko Tool & Engineering Corporation ("Walerko"), by counsel, requests pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure that the Plaintiff United States of America (the "Plaintiff") produce the documents and tangible items identified below in accordance with Rule 15 of the General Rules of the United States District Court for the Northern District of Indiana. This production is to be made at the offices of Barnes & Thornburg, 305 Ameritrust National Bank Building, 301 South Main Street, Elkhart, Indiana 46516, and is to occur on Thursday, March 5, 1992, at 10:30 a.m.

**DEFINITIONS**

1. "CERCLA" is defined as the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601-9675, as amended by the Superfund Amendments and Reauthorization Act of 1986, 100 Stat. 1613 (1986).

2. "Facility" means the Walerko plant and all adjoining real property owned or leased by Walerko located at 1935 W. Lusher Avenue, Elkhart, Indiana.

3. "Site" refers generally to the 46 square block, mixed residential/industrial area on the southwest side of Elkhart, bordered by the St. Joseph River to the north, State Road 19 to the west, Avalon Street (north of Lusher Avenue) and 15th Street (south of Lusher Avenue) to the east, and Leininger Street to the south.

#### **REQUEST FOR PRODUCTION OF DOCUMENTS**

1. All documents identified in the answers to Interrogatories Nos. 2, 3, 5, 7, 8, 9, 10, 11, 13, 14, 15, 16, 18, and 19.

2. All documents (other than those produced in Interrogatory Nos. 2, 3, 5, 7, 8, 9, 10, 11, 13, 14, 15, 16, 18, and 19) identified in your answers to Defendant's First Set of Interrogatories.

3. All responses received by Plaintiff to requests for information under CERCLA Section 104(e) and RCRA Section 3007 involving the Site.

4. All reports generated by and correspondence between Plaintiff and any of Plaintiff's contractors, including but not limited to Jacob's Engineering Group, Inc., Aqua Lab from Bartlett, Illinois, and Roy F. Weston, Inc., relating to the Site and real estate adjacent to the Site.

5. All reports or memoranda, correspondence, field notes, drafts, and other documents generated by Plaintiff relating to the Site and real estate adjacent to the Site.

6. The text of section 2.3, p. 14 of the On-Site Coordinator's Report, CERCLA Immediate Removal Action, Lusher Street Site, Elkhart, Indiana, prepared by Kenneth M. Theisen and dated March 6, 1989.

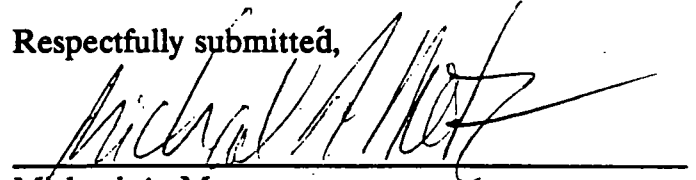
7. All test results or other analytical data, including quality/quantity data, in possession of Plaintiff relating to the Site.

8. All written material Plaintiff has regarding the geology or hydro-geology of the Site.

9. All statements in any form from any person relating to the allegations set forth in Plaintiff's Complaint, including but not limited to, notes, reports on conversations, reports on interviews, paraphrasing of conversations, phonetic reporting, stenographic verbatim reports of conversations, and transcripts of phonetic recordings or other memoranda.

10. All documents which Plaintiff was to exchange under the Order on Status Conference, paragraph 2, dated November 4, 1991.

Respectfully submitted,

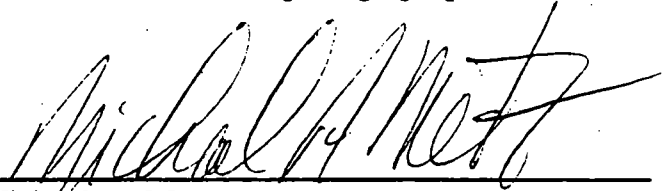


Michael A. Metz  
Attorney No. 13722-20  
BARNES & THORNBURG  
305 Ameritrust National Bank Bldg.  
301 South Main Street  
Elkhart, Indiana 46516  
Telephone: (219) 293-0681

Attorneys for Defendant

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the <sup>4th</sup> 3rd day of February, 1992, a true and complete copy of the above and foregoing pleading was served upon each party or attorney of record herein by depositing the same in the United States mail, first class postage prepaid.

  
Michael A. Metz

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

WALERKO TOOL &  
ENGINEERING CORPORATION, )

Defendant. )

CASE NO.S91-00411M

**DEFENDANT'S FIRST SET OF INTERROGATORIES TO PLAINTIFF**

Defendant Walerko Tool & Engineering Corporation ("Walerko"), by counsel, requests the Plaintiff United States of America (the "Plaintiff") answer the following Interrogatories within Thirty (30) days of service pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and in accordance with Rules 14 and 15 of the General Rules of the United States District Court for the Northern District of Indiana.

**DEFINITIONS**

1. "CERCLA" is defined as the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601-9675, as amended by the Superfund Amendments and Reauthorization Act of 1986, 100 Stat. 1613 (1986).
2. "Dispose of", "disposing" or "disposal" shall have the meaning set forth in CERCLA Section 101(29), 42 U.S.C. §9601(29).
3. "EPA" means the United States Environmental Protection Agency.

4. "Facility" means the Walerko plant and all adjoining real property owned or leased by Walerko located at 1935 W. Lusher Avenue, Elkhart, Indiana.

5. "Hazardous substance", "environment", "person", and "response" are used herein as they are defined at 42 U.S.C. §9601.

6. "Information request" means any request for information issued by the United States Environmental Protection Agency to Defendant pursuant to CERCLA section 104(e), 42 U.S.C. §9604(e), or RCRA section 3007, 42 U.S.C. §6927.

7. "Site" refers generally to the 46 square block, mixed residential/industrial area on the southwest side of Elkhart, bordered by the St. Joseph River to the north, State Road 19 to the west, Avalon Street (north of Lusher Avenue) and 15th Street (south of Lusher Avenue) to the east, and Leininger Street to the south.

8. "Substance" means any liquid, semi-liquid, sludge, gaseous, solid, or semi-solid, or other materials (including, without limitation, all residues in drums and all contact and non-contact water or process water employed in any chemical or industrial operation) that are, that contain, or may contain chemicals or chemical, industrial, domestic or other by-products, test products, unused products, materials that may be recycled, mixtures, sewage, solid or hazardous waste, hazardous substances (as defined above) or a pollutant or a contaminant.

9. "Test" includes every sampling or analytical procedure (at the Site or in a laboratory) to ascertain the nature, type, amount chemical content or consistency of any substance.

## INTERROGATORIES

INTERROGATORY NO. 1: State the name, address, relationship to the Plaintiff, and telephone number of each person who has knowledge of the facts or circumstances concerning this case involving Walerko and state the facts or circumstances within the knowledge of each person.

ANSWER:

✓ ME

INTERROGATORY NO. 2: State the name, address, social security number, relationship with the Plaintiff, and telephone number of each expert with whom Plaintiff has consulted, been advised, received information, employed in anticipation of this action, employed in preparation of trial of this action, and whom Plaintiff may call or intends to call as a witness at the trial of this action, then explain the subject matter on which the expert is expected to testify, the facts and opinions to which the expert is to testify, and a summary of the grounds for each opinion plus identify all documents used or created by such expert.

ANSWER:



**INTERROGATORY NO. 3:** Attached hereto as Exhibit 1 is a Site Map which was attached to Plaintiff's First Request for Admission and Second Set of Interrogatories to Defendant Walerko (the "Second Set"). State whether Exhibit 1 is a page and part of a report, analytical work, field notes, or other documentation in Plaintiff's possession, and if so, identify such documentation by title, date, and person or entity who created such documentation.

**ANSWER:**

**INTERROGATORY NO. 4:** Identify the person(s) or entity who created the key on the left side of Exhibit 1 by name, address, and telephone number, then explain in detail the basis for the listing of company names behind letters A through D.

**ANSWER:**

**INTERROGATORY NO. 5:** State whether staff members or employees of Plaintiff have conducted meetings or telephone conversations with directors, officers, agents, employees, or other persons acting or purporting to act on behalf of any of the four companies listed in the key on Exhibit 1 or any other entity which provided information that relates to the allegations as presented in Plaintiff's Complaint, and if so, provide names, addresses, and telephone numbers plus identify all persons in regard to their relationship with Plaintiff and/or other entity described in Plaintiff's response to this Interrogatory then identify all written material pertinent to the communications.

**ANSWER:**

**INTERROGATORY NO. 6:** Attached hereto as Exhibit 2 is a title page plus page 14 of the On-scene Coordinator's Report, CERCLA Immediate Removal Action, Site, prepared by Kenneth M. Theisen and dated March 6, 1989. Set forth word-by-word the information redacted in paragraph 2.3 labeled Responsible Parties.

**ANSWER:**

**INTERROGATORY NO. 7:** Set forth all information in Plaintiff's possession which indicates that a disposal or release of hazardous substances was made into the environment near or at the Facility and identify written material of such information.

**ANSWER:**

**INTERROGATORY NO. 8:** Describe in detail the basis for the conclusion of Plaintiff that the alleged contamination at the Site posed a substantial and imminent threat to human health and identify written material of such bases.

**ANSWER:**

**INTERROGATORY NO. 9:** Describe in detail the basis of Plaintiff that all Superfund money spent on response actions involving the Site are consistent with the National Contingency Plan, specifically describing the approval process and removal action referred to in paragraphs 10 and 11 of Plaintiff's Complaint then identify all written material on the bases, approval process, and removal action.

**ANSWER:**

**INTERROGATORY NO. 10.** Identify all sampling data relative to the Site and state the name, address, and telephone number of all individuals who performed tests at the Site then describe in detail the conclusions of Plaintiff from the sampling data.

**ANSWER:**

**INTERROGATORY NO. 11.** Identify all persons and/or entities by name, address, and telephone number who is a potential source of the alleged contamination at the Site and identify any documentation substantiating the same.

**ANSWER:**

**INTERROGATORY NO. 12.:** Identify all monitoring wells from which samples were taken that led to information involving the Facility.

**ANSWER:**

**INTERROGATORY NO. 13.:** Explain in detail the nature of the alleged contamination at the Site and the extent of such contamination specifically in geographical, hydro-geographical, and concentration terms then identify all alleged hazardous substances and written material about the alleged contamination.

**ANSWER:**

X

12/11

**INTERROGATORY NO. 14.:** In paragraph 8 of Plaintiff's Complaint, Plaintiff stated that the "U.S. EPA received information indicating that several drinking water supply wells at the Site were contaminated with 'hazardous substances'." Identify all such information including written documentation and identify the supply wells specifically listing the address of the real estate on which the supply wells are located.

*M7*

**ANSWER:**

**INTERROGATORY NO. 15.:** In paragraph 13 of Plaintiff's Complaint, Plaintiff states that the "U.S. EPA demanded reimbursement from Walerko of the response cost incurred in connection with the removal action." Explain in detail why the EPA made such demand, specifically describing all facts and basis for Plaintiff asserting that Walerko is liable under CERCLA then identify all written material substantiating the same.

**ANSWER:**

**INTERROGATORY NO. 16:** Attached hereto as Exhibit 3 is a letter from Plaintiff to Walerko dated in May, 1988, which was attached to the Second Set. Identify the sampling data, analytical results, and all other information used by Plaintiff in regard to the results indicated on Exhibit 3.

**ANSWER:**

**INTERROGATORY NO. 17:** State whether the information requests to Walerko in the March 26, 1990, and May 21, 1990, letters from the EPA were requests for information different than the information requested in the December 28, 1990, letter from the EPA to Walerko, and if so, explain in detail all the differences.

**ANSWER:**



**INTERROGATORY NO. 18.** Provide a detailed accounting of the damages for which the Plaintiff is claiming relief under its Second Claim for Relief of the Complaint in this cause.

**ANSWER:**

**INTERROGATORY NO. 19.** Describe in detail the other evidence and identify witness names which Plaintiff was supposed to have provided pursuant to the Order on Status Conference, paragraph 2, dated November 4, 1991.

**ANSWER:**

**INTERROGATORY NO. 20.** State the name, address, and telephone number of each person who participated in preparing the answers to these Interrogatories and identify the parts of the Interrogatory answers with which such person was involved describing specifically whether such person used material, conferred with other persons, or related the information from personal knowledge then identify the source in each case.

**ANSWER:**

The undersigned affirms under the penalties for perjury that the foregoing answers are true and correct plus the undersigned commits on behalf of Plaintiff pursuant to Rule 29 of

the Federal Rules of Trial Procedure that Plaintiff will supplement its responses in accordance with Rule 26(E) of the Federal Rules of Civil Procedure.

---

---

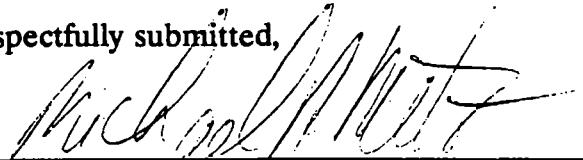
---

---

---

Name, Title, Address, and Telephone Number

Respectfully submitted,



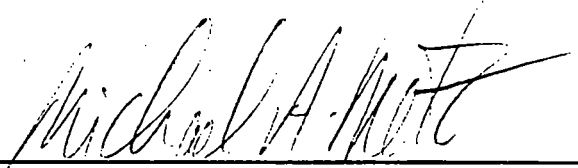
---

Michael A. Metz  
Attorney No. 13722-20  
BARNES & THORNBURG  
305 Ameritrust National Bank Bldg.  
301 South Main Street  
Elkhart, Indiana 46516  
Telephone: (219) 293-0681

Attorneys for Defendant

CERTIFICATE OF SERVICE

476  
The undersigned hereby certifies that on the ~~3rd~~ day of February, 1992, a true and complete copy of the above and foregoing pleading was served upon each party or attorney of record herein by depositing the same in the United States mail, first class postage prepaid.

  
\_\_\_\_\_  
Michael A. Metz

# KEY

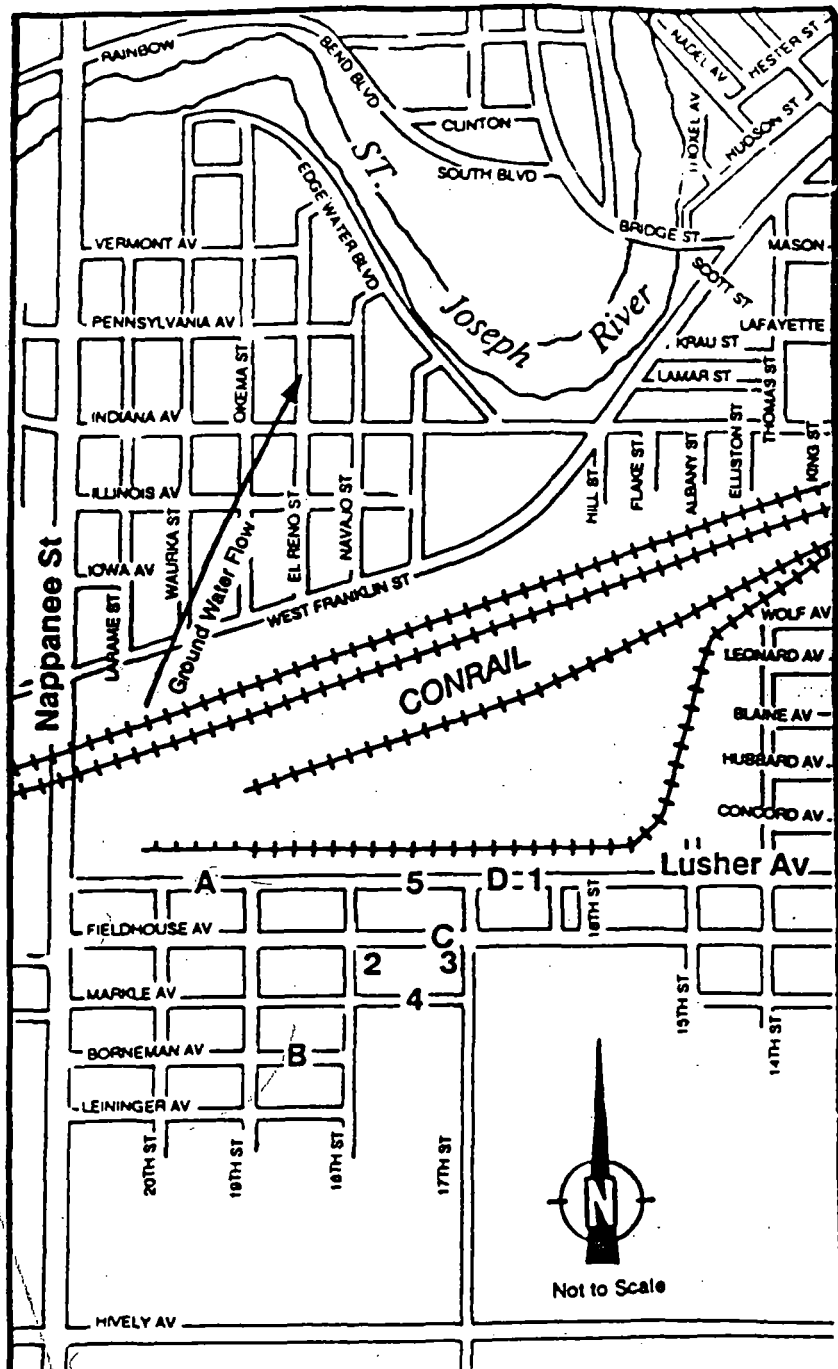
- A - Walerko
- B - Valley Machine products
- C - IMC
- D - Atlas Chem Milling

1,1,1 - TCD      TCE

1 - 3,800	608
2 - 24	71
3 - 34	1390
4 - 34	93
5 - 516	390

**JE** JACOBS ENGINEERING GROUP INC.  
ENVIRONMENTAL SYSTEMS DIVISION

*ESher* 6/24/88



**Figure 2**  
**Site Map**  
**Lusher St. Contamination Area**  
**Elkhart, Indiana**

ON-SCENE COORDINATOR'S REPORT  
CERCLA IMMEDIATE REMOVAL ACTION  
LUSHER STREET SITE  
ELKHART, INDIANA

DELIVERY ORDER NO. 7460-05-102

SITE NO. AB

Removal Dates: 11-19-87 thru 08-31-88

Kenneth M. Theisen  
Kenneth M. Theisen

3-6-89  
Date

ON-SCENE COORDINATOR  
RESPONSE SECTION II  
EMERGENCY and ENFORCEMENT RESPONSE BRANCH  
WASTE MANAGEMENT DIVISION  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION V

EXHIBIT 2

## 1.6 Community Relations

No formal community relations plan was developed, although U.S. EPA Community Relations Coordinator Art Gaisior did visit a few affected residents to explain U.S. EPA actions in November 1987. U.S. EPA OSC Theisen maintained a rapport with local residents, press, local health department and city officials throughout the action.

## 2.0 Effectiveness of Action

### 2.1 Local and State Officials

As discussed in Section 1.2.1 the ECHD was instrumental in identifying several affected residences and initial delineation of the plume of contamination. The City of Elkhart's Engineer Office provided maps of the area which were used throughout the project.

The Indiana Department of Environmental Management (IDEM) has agreed to assist home owners with the maintenance cost of their carbon filtration systems. They were kept abreast of all developments as this project progressed and together with the ECHD will monitor the plume's movement.

### 2.2 Federal Actions

The U.S. EPA was the only Federal Agency involved at the Lusher Street site. Actions taken by the U.S. EPA mitigated the ingestion and inhalation threats posed to human health by VOC contaminated ground water.

### 2.3 Responsible Parties

Redacted information not relevant to selection of removal action.

### 2.4 Contractor

All contractors and subcontractors performed in a admirable fashion.

### 3.0 Problems Encountered

No major problems were encountered during this action.

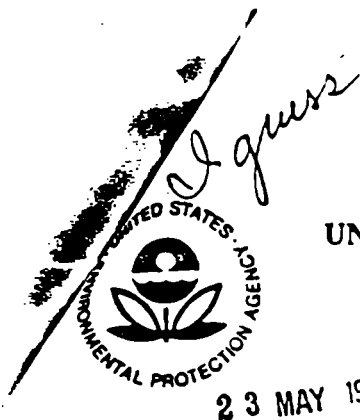
### 4.0 OSC Recommendations

Future actions of this kind can be expedited if conducted by an OSC experienced with this type of project. Senior OSC oversight could result in a reduction of the number of samples taken, a reduction in cost, and a more efficient removal action.

50-7

C

MAY 25 1988



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.  
CHICAGO, ILLINOIS 60604

23 MAY 1988

REPLY TO THE ATTENTION OF:

5HR-11/WRS

Mr. Tom Walerko  
1935 West Lusher St.  
Elkhart, Indiana 46517

Dear Mr. Walerko:

The United States Environmental Protection Agency (U.S. EPA) recently sampled your well water and analyzed it for volatile organic compounds (voc's). The results of your analysis are shown below.

Trichloroethylene (TCE)	= 38 parts per billion (ppb)
1,1,1-Trichloroethane (1,1,1-TCA)	= 660 ppb
1,1-Dichloroethene (1,1-DCE)	= 19 ppb
Carbon tetrachloride (CCl <sub>4</sub> )	= 82 ppb
1,1-Dichloroethane (1,1-DCA)	= 4 ppb

This data confirms the analytical results of the Elkhart County Health Department. Your decision to connect to the municipal water system to protect the health and safety of your employees was an appropriate action.

If you have any questions, I can be reached at (312) 886-1959.

Sincerely,

A handwritten signature in cursive script that reads 'Kenneth M. Theisen'.

Kenneth M. Theisen, On-Scene Coordinator  
Western Response Section

EXHIBIT 3